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No. 460

In the Supreme Court of the United States

OCTOBER TERM, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE FALK CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Seventh Circuit, entered on July 13, 1939, in so far as that decree modified an order of the Board issued against respondent.

OPINIONS BELOW

The first opinion of the Circuit Court of Appeals (R. 1198) is reported in 102 F. 2d 383. The second opinion (R. 1208) is not yet reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1165–1180) are reported in 6 N. L. R. B. 654.

JURISDICTION

The decree of the Circuit Court of Appeals was entered July 13, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, in ruling upon a petition by the Board to enforce an order issued against respondent in an unfair labor practice proceeding under Section 10 of the National Labor Relations Act, the court below had jurisdiction so to modify the Section 10 order as to invalidate or modify a direction of election (not sought to be reviewed by either party) issued by the Board in a separate representation proceeding under Section 9 (c).

2. Whether, upon findings approved by the court below that respondent dominated and interfered with, and is dominating and interfering with a labor organization of its employees in violation of the Act, it was within the power of the Board (1) to require respondent to withdraw all recognition from and completely to disestablish that labor organization as a bargaining representative of its employees, and (2) in a separate representation proceeding to direct an election in which the disestablished organization was to be omitted from the ballot.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 *et seq.*) are set forth in the Appendix, *infra*, pp. 21–23.

STATEMENT

Pursuant to a charge and amended charge (R. 18–19, 20–21) filed by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528, a labor organization, the Board on August 4, 1937, pursuant to Section 10 (b) of the Act, issued its complaint and notice of hearing which were duly served upon respondent (R. 14–18). The complaint alleged, in substance, that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) of the Act. Respondent duly filed its answer (R. 21–25) denying that it had violated the Act.

At the same time that it filed the amended charge pursuant to Section 10 (b), the Amalgamated likewise filed a petition (R. 13–14) requesting the investigation of a question concerning the representation of respondent's employees asserted to have arisen under Section 9 (c). In this proceeding the Board ordered an investigation and authorized its Regional Director at Milwaukee, Wisconsin, to provide for an appropriate hearing upon notice (Bd. Ex. No. 1).[1]

[1] This exhibit, and Board Exhibit No. 2, referred to in the next paragraph, are not printed but are on file with the Clerk.

Thereafter, as permitted by its rules,[2] the Board ordered that the unfair labor practice proceeding against respondent under Section 10 and the representation proceeding under Section 9 (c) be consolidated for the purpose of hearing (Bd. Ex. No. 2). The consolidated hearing was held from August 16 to 25, 1937. The Board, respondent, the Independent Union of Falk Employees, and the International Union of Operating Engineers, Local 311, participated in the hearing by counsel (R. 26).[3]

On November 2, 1937, the Trial Examiner filed his Intermediate Report in the unfair labor practice proceeding (R. 1136–1152), finding that respondent had violated Section 8 (1), (2), and (3) of the Act.[4] Exceptions were filed by respondent (R. 1153–1161) and by the Independent (R. 1161–1164), and on February 25, 1938, they and the Operating Engineers appeared before the Board by

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[2] Article III, Sec. 10, Rules and Regulations of the National Labor Relations Board—Series 1, as amended, issued April 27, 1936. The Board's present rules, "Series 2," issued July 14, 1939, do not change the provision for consolidation.

[3] The Independent Union of Falk Employees, a labor organization alleged in the complaint to be dominated by respondent, and the International Union of Operating Engineers, Local 311, a labor organization claiming to represent some of respondent's employees, intervened (Bd. Exs. Nos. 6–9, R. 32, 33).

[4] The Trial Examiner found that respondent did not violate Section 8 (5) (R. 1147). The Board affirmed this action and likewise dismissed the Section 8 (3) allegations (R. 1181). The Board's order (R. 1165–1182) involves only Section 8 (1) and (2).

counsel and were heard in oral argument (R. 1165). Respondent and the Independent also filed briefs with the Board.

On April 18, 1938, the Board issued its Decision and Order in the unfair labor practice proceeding and its Decision and Direction of Election in the representation proceeding, in consolidated form (R. 1165–1182). The Board's findings of fact may be briefly summarized as follows:[5]

Respondent produces and sells steel castings and related products, and is extensively engaged in interstate commerce (R. 1170, Bd. Ex. No. 16). In 1933 a Works Council, a form of employee representation, was set up in the respondent's plant at the suggestion of Harold Falk, respondent's vice-president (R. 1171, 43, 45). The Council's chairman and secretary were appointed by respondent, the employees were warned by respondent's officers not to vote for "outsiders" as representatives, and votes cast for outside representatives were not counted (R. 1171, 179, 505, 551–552). The Works Council was continued for about 21 months after the National Labor Relations Act became effective, but in April, 1937, respondent and the Council decided that the latter would have to be disestablished because of the Act's provisions prohibiting company dominated labor organizations (R. 1171, 275). The

[5] In the following statement the first record reference is to the findings of the Board and the succeeding references are to the evidence supporting those findings.

Amalgamated and the Operating Engineers were at that time attempting to organize respondent's employees (R. 1174, 477, 557, 558, 639). Vice-President Falk, at the final meeting of the Works Council, announced that a scheduled general wage increase would be cancelled if an outside labor organization entered the plant (R. 1171–1172, 502, 837, 1007–1009), and suggested that the employees form an independent union as successor to the Works Council (R. 1171, 508–509). Respondent had long been hostile to nationally affiliated labor organizations (R. 1171–1172, 40, 50, 51, 63, 71, 75, 90, 91).

A number of employees who had been on the dissolved Works Council proceeded to carry out Falk's suggestion. Notices of the first meeting, on April 12, were delivered by respondent's personnel manager (R. 1172, 763, 213, 214, 215–220). At this meeting Falk agreed to advance the wage increase from June 1 to May 1, and the evidence indicates that this action was taken for the purpose of keeping employees from joining the Amalgamated by demonstrating the effectiveness of the "inside" organization (R. 1172, 510, 557, 813, 814, 829, 874, 950).

Respondent continued closely to supervise the formation of the Independent. Responsible officials of respondent attended a meeting of the Independent's organizers at which the details of organization were decided upon (R. 1172, 511, 560,

832, 850, 851, 891, 915). Vice-President Falk recommended an attorney (R. 1172–1173, 84, 85, 284), who advised the organizers as to the procedure to be followed for successful establishment of the Independent (R. 1173–1174, 345–350, 563). The organization meetings were held on respondent's property during working hours (R. 1172, 258, 931).* On April 23 respondent recognized the Independent as the sole collective bargaining agency for all of its employees, without requesting or receiving any proof that the Independent represented a majority (R. 1174, 860, 892, 894, 1091, 1092).

Throughout this period, respondent exerted intensive efforts to keep its employees out of the Amalgamated and the Operating Engineers. Vice President Falk, by coercive conversations with the employees, destroyed the Operating Engineers' majority representation among the powerhouse employees (R. 1174–1175, 638, 641, 159, 140–146, 1090, 75, 148, 641, 642–644). The supervisory staff engaged in widespread intimidation against the Amalgamated and in favor of the Independent (R. 1174, 103, 237–239, 241, 255–257, 478, 479, 480, 685–686).

* The organizers were at first paid for the time spent in organizational activities (R. 258, 301, 931), but later, after the Independent had been recognized as sole bargaining representative, the payments were deducted from their pay upon the advice of counsel (R. 930, 958).

Upon these facts the Board found that respondent by coercing its employees in the exercise of their right to self-organization and by dominating and interfering with the formation and administration of the Independent and by contributing support to it, had violated and was violating Section 8 (1) and (2) of the Act (R. 1179–1180). The Board ordered respondent to cease and desist from these unfair labor practices, to withdraw all recognition from the Independent as a representative of any of its employees for the purposes of collective bargaining and completely to disestablish the Independent as such representative, and to post appropriate notices (R. 1180–1181).

In the representation proceeding, the Board found that a question had arisen concerning the representation of respondent's employees (R. 1178). The Board directed that, as part of the investigation to ascertain representatives for collective bargaining, an election be held, upon further order of the Board "after we are satisfied that the effects of respondent's unfair labor practices have been dissipated by compliance with this order"; and that the Amalgamated and the Operating Engineers, but not the Independent, appear on the ballots (R. 1178, 1181–1182).

On June 30, 1938, the Board filed in the court below, pursuant to Section 10 (e), its petition for enforcement of the order in the unfair labor practice proceeding (R. 1–5). On March 7, 1939, the court handed down an opinion (R. 1198) holding

that the Board's findings of fact were supported by the evidence, and concluding that "the order of the Board is valid and that its petition for enforcement should be, and is hereby, granted" (R. 1206). On the same day the court entered an order for enforcement (R. 1207).

Thereafter the court submitted to the parties a proposed decree (R. 1210–1211, 1212–1214), which modified the Board's order in substantial respects. The Board filed objections and a supporting memorandum, but on July 13, 1939, a majority of the court, after a hearing, adopted and entered the proposed decree (R. 1212–1214). In addition to requiring that respondent cease and desist from its violations of Section 8 (1) and (2) of the Act, the decree provides as follows (R. 1210–1211, 1213–1214), the italicized matter representing the important provisions added to the Board's order (R. 1181–1182):

> IT IS FURTHER ORDERED that said respondent withdraw recognition of the Independent Union as the representative of all or any of its employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment of labor; *provided, however, that the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in*

labor-relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union.

IT IS FURTHER ORDERED that the respondent shall post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating that the respondent will and does withdraw recognition of the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment, and that it has, and does, completely disestablish such labor organization as such representative, *and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes.*

* * * * *

It is further ordered, That this court, by this order, is not approving nor is it disapproving the direction of the National Labor Relations Board in reference to a coming or possible election by employees to choose their bargaining agency, and this order is not to be construed as approving any fu-

ture action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc.[1]

Judge Treanor, concurring in part, expressed the opinion that the direction of election was not before the court and that, if it were, the Board had not abused its discretion in omitting the Independent from the ballot (R. 1211–1212).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that it had jurisdiction so to modify the Board's order under Section 10 as to invalidate or modify the direction of election which the Board had issued under Section 9 (c).

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[1] The additional modifications were these: (1) The first paragraph quoted *supra* omitted the Board's requirement that respondent disestablish the Independent (R. 1180), although the court did order respondent to post notices that it "has, and does," disestablish the Independent. (2) The notices provision as enforced by the court (second paragraph, *supra*) omits the requirement contained in the Board's order that the notices state "that the respondent will cease and desist" from the practices forbidden by the cease-and-desist portion of the order (R. 1181), although the court had expressly upheld the validity of that provision over objection by respondent (R. 1205). While the omission of this provision is not relied on as a reason for granting the writ, the Board asks that the Court review it if this petition is granted.

2. In holding that the Board had acted unlawfully in directing an election to be held omitting the Independent from the ballot.

3. In providing in its order that respondent's employees shall remain free to choose the Independent as their bargaining agency at any future election held pursuant to the Act.

4. In omitting from its order the provision of the Board's order that the notices posted by respondent include a statement that the respondent "will cease and desist" from the practices forbidden by the cease and desist portion of the order.

5. In refusing to enforce the affirmative provisions of the Board's order as issued by the Board.

REASONS FOR GRANTING THE WRIT

1. The court below declined to grant full enforcement of the Board's establishment order. Had it done merely that, the only question presented would be whether the disestablishment order represented an abuse of the Board's discretion. But the decision below is not so confined. The second opinion declares (R. 1209) that the court is passing upon the "coming election" and that there is "before us for final disposition the matter of the selection of the bargaining agent." That opinion deals directly and well-nigh exclusively with the election which the Board had directed in the representation proceeding under Section 9 (c). The decree leaves no doubt that the Board's direction of election is reviewed and modified. It provides (R. 1211, 1213):

> * * * the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the National Labor Relations Act, the Independent Union to represent them in labor relation dealings with respondent; * * *

The court below stated (R. 1209) that it would not act if there were before it only a direction of election, but apparently thought that its jurisdiction was extended over the direction of election because the Section 10 order, and especially its disestablishment provisions, were before it. The question whether the Act confers jurisdiction upon the circuit courts of appeals to review directions of election, standing alone, is now before this Court in *National Labor Relations Board* v. *International Brotherhood of Electrical Workers*, 105 F. (2d) 598 (C. C. A. 6th), certiorari granted, October 9, 1939, No. 253, this Term. In that case it was held that the courts have such jurisdiction; in several other cases the contrary has been held.[8] There is also now before the Court, in *American Federation of Labor* v.

[8] *Cupples Company Manuf'rs* v. *National Labor Relations Board*, 103 F (2d) 953, 955 (C. C. A. 8th); *Unlicensed Employees of Sabine Transportation Co.* v. *National Labor Relations Board*, decided November 12, 1937 (C. C. A. 5th) (reported in C. C. H., Labor Law Service, p. 16040). In two earlier cases the court below had dismissed petitions to review directions of elections. *New York Handkerchief Co.* v. *National Labor Relations Board*, 97 F. (2d) 1010; Armour & Co. v. *National Labor Relations Board*, 105 F. (2d) 1016.

National Labor Relations Board, 103 F. (2d) 933, certiorari granted, October 9, 1939, No. 70, this Term, the question whether the circuit courts of appeals have jurisdiction to review certifications issued by the Board. In that case, and also in *United Employees Association* v. *National Labor Relations Board,* 96 F. (2d) 875 (C. C. A. 3d), the courts held that they did not.* Since these aspects of the question of the jurisdiction of the courts to review directions of elections and certifications of the Board are already before the Court, it seems plainly desirable that the petition be granted in this case so that the additional facet of the question here presented can be considered and determined.

That any judicial review of a direction of election or a certification of the Board (except as provided in Section 9 (d) of the Act, discussed in footnote 11, *infra,* p. 15), is contrary both to the terms of the Act and its meaning as disclosed by its legislative history has been shown in the petition for certiorari filed in behalf of the Board in *National Labor Relations Board* v. *International Brotherhood of Electrical Workers,* No. 253, this Term, and in the Government's memorandum in *American Federation of Labor* v. *National Labor*

* If a certification—the final step in a representation proceeding—is not reviewable, a direction of election, which is a preliminary direction of the Board to its own subordinate officials to take certain proceedings as part of the investigation concerning representation, is, *a fortiori*, not reviewable.

Relations Board, No. 70, this Term, to which the Court is respectfully referred. And the lack of jurisdiction in the present case is even clearer than in those cases and the others cited above. In each of those cases a petition was filed in the court of appeals seeking to set aside the direction of election or certification. Here the Board's petition sought only enforcement of its order in the unfair labor practice proceeding (R. 1180–1181). It did not seek enforcement of its direction of election (R. 1–5) and could not have done so.[10] Nor did respondent's answer to the enforcement petition seek to enlarge the issues; it merely denied that the order sought to be enforced was valid and prayed that enforcement be denied (R. 6). Hence, a statutory prerequisite to any jurisdiction over the representation proceeding—the filing of a petition—was plainly lacking.[11]

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[10] Section 10 (e) is limited to proceedings to enforce unfair labor practice orders issued under Section 10 (c); moreover, the Board could not have sought "enforcement" of the direction of election against respondent, since the direction did not purport to require respondent, or any one other than the Board's Regional Director, to take or refrain from taking any action.

[11] Section 9 (d) of the Act (*infra*, p. 22) clearly did not apply. That section permits a review of "facts certified" in a representation proceeding under Section 9 (c) when the certification forms a basis for a subsequent order issued under Section 10 (c) in an unfair labor practice case, *e. g.*, where an order to bargain collectively is predicated in part upon a prior certification of the complaining union as the

2. Laying aside the question of the lower court's jurisdiction to review the representation proceeding, its refusal to grant full enforcement of the disestablishment order after sustaining the Board's findings of domination, interference, and support of the Independent by respondent, and its order that the Independent be placed on the ballot in any election to determine employee representation, are in conflict with the applicable decisons of this Court, and are an improper interference with the discretion conferred by the Act upon the Board in protecting rights guaranteed employees by the Act.

The court below, while it ordered respondent to withdraw recognition of the Independent as the representative of its employees for collective bargaining, and to post notices to that effect and that it had disestablished the Independent as such representative, also ordered that the employees remain free at the coming election to choose the Independent as their representative, and that the notices to be posted by respondent state that it would not recognize the Independent unless the employees thereafter selected it as their representative. And the order furfher provided that (R. 1214):

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exclusive representative. In the present case no facts have been certified in the representation proceeding, it and the unfair labor practice case were independent, although they were, for convenience, tried together and decided simultaneously by the Board, and the Board's order in the unfair labor practice case was not based in any way upon the direction of election.

> this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining * * *.

The court below thus took the position that an election at which the company-dominated union was rejected was a prerequisite to disestablishment of that union, or, perhaps, that it was within the court's discretion to require such a prerequisite. The same view was taken by the Third and Ninth Circuits in the *Greyhound* cases, but was rejected by this Court in reversing their decisions. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 264, 268; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272. The decision below is in conflict with those decisions. It presents, moreover, the same general question in substance that is before the Court in *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Company*, No. 20, this Term, in which enforcement of a disestablishment order was denied by the Circuit Court of Appeals for the Fourth Circuit.

A cease and desist order can prevent future acts of domination, interference, and support in violation of Section 8 (2), but it cannot wholly eliminate the continuing effect of past interference with the employees' free choice of their bargaining representatives. As said by the Board in the *Pacific*

Greyhound Lines case, a cease and desist order "would not set free the employee's impulse to seek the organization which would most effectively represent him" (303 U. S. at 275). It is the purpose of the affirmative disestablishment order to meet this need: to remove, by severing the ties of recognition and bargaining, the barrier to free choice erected by the employer.

The Board, having found that respondent had violated Section 8 (1) and (2) of the Act, was authorized by Section 10 (c) of the Act to require, in addition to the cessation of such practices, such affirmative relief as it found would effectuate the policies of the Act. In the exercise of that authority it concluded that respondent should withdraw recognition from and disestablish the Independent as the representative of its employees for collective bargaining. From that conclusion the Board's direction in the representation case that the Independent should be omitted from the ballot in the election obviously followed. No question exists as to the power of the Board to order full disestablishment. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 268; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240. See also *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 236. And no question exists as to the scope of review: the Board was authorized by Congress to draw the inference of fact

whether the Independent would be a continuing obstacle to the full and free exercise of the employees' rights to choose their own representatives for collective bargaining, and to decide what affirmative action would effectuate the policies of the Act. Its determination was conclusive if there is evidence to support it. *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275. Here the court below found that the evidence "rather conclusively points to the findings made by the Board" (R. 1205). In substituting its own judgment for that of the Board as to the appropriate remedy the court below plainly overstepped its reviewing functions, as delimited by the Act and by the decisions of this Court.

This question is one of great importance. Elimination of the company dominated union was one of the chief objects of Congress. Disestablishment was expressly contemplated as the normal method. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261. It has been the Board's policy to order disestablishment of company dominated or interfered with organizations, and to deny them a place upon the ballot in a representation proceeding. *Third Annual Report of the National Labor Relations Board* (G. P. O. 1939), pp. 144, 197–198. Frequently these steps are taken simultaneously, after a consolidated hearing, as in this case, upon a petition in a representation proceeding and a complaint in

an unfair labor practice case alleging that the employer has violated Section 8 (2) of the Act. This practice is plainly in accord with the Congressional intention. The contrary action taken by the court below would defeat proper and effective administration of the Act, as regards both its representation and unfair labor practice provisions.[12]

CONCLUSION

For the foregoing reasons we respectfully submit that this petition for a writ of certiorari should be granted.

ROBERT H. JACKSON,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

OCTOBER 1939.

[12] In a similar decision the Circuit Court of Appeals for the First Circuit recently held that a disestablishment order should not be enforced and that, instead, the Board "should order an election" with the company dominated union upon the ballot. *National Labor Relations Board* v. *Bradford Dyeing Association*, decided August 2, 1939.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 *et seq.*) are as follows:

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * * *

SEC. 9. * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SEC. 10. * * *

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all

the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * *

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